

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH C. MCKNIGHT,
 #95411

Plaintiff,

vs.

STATE OF NEVADA, *et al.*,
 Defendants.

3:10-cv-00259-LRH-VPC

ORDER

This is a prisoner civil rights action, which this court dismissed on December 10, 2010 (docket #16), and judgment was entered accordingly (docket #17). The Ninth Circuit Court of Appeals has remanded this case for the limited purpose of allowing this court to consider whether plaintiff's possible request to reopen the time to appeal should be granted (*see* docket #28). As will be discussed below, no good cause exists to reopen the time to appeal.

On April 29, 2010, the court received a handwritten document from plaintiff entitled "First District Court, Carson County, Nevada, Civil Action" (docket #1-1). On July 13, 2010, the court issued an order stating that such document was insufficient to initiate a civil rights action in this court and directing plaintiff to submit a completed and signed complaint on the court's form (docket #6). On July 30, 2010, plaintiff filed a complaint on the court's form (docket #9). Plaintiff subsequently sought and was granted leave to file an amended complaint within thirty days of the court's Order dated October 21, 2010 (docket #14). That Order was served on plaintiff at his address of record.

On December 10, 2010, after more than the time allotted for plaintiff to file his amended complaint had elapsed without plaintiff filing an amended complaint, the court screened plaintiff's

1 complaint dated July 30, 2010. In his complaint, plaintiff named only defendants who are not amenable
2 to suit under 42 U.S.C. § 1983 (the State of Nevada and its department of corrections and various
3 corrections institutions), and set forth only claims that were duplicative of another action he had pending
4 before this court, claims for which his sole remedy would be a writ of habeas corpus, and claims for
5 which the statute of limitations had expired. Accordingly, the Screening Order dismissed plaintiff's
6 complaint with prejudice for failure to state a claim for which relief may be granted (docket #16), and
7 judgment was entered (docket #17). That Order was served on plaintiff at his address of record on
8 December 17, 2010.¹

9 More than five months later on May 25, 2011, plaintiff filed a notice of appeal (docket #23). He
10 stated on the notice of appeal form "court failed to notify plaintiff of this requested date." The Court
11 of Appeals has remanded this case to this court for the limited purpose of determining whether this
12 statement should be construed as plaintiff stating that he never received notice of the judgment and
13 whether plaintiff's time to appeal should be reopened (docket #28; USCA Case No. 11-16314).

14 No good cause exists to reopen the time to appeal. Plaintiff was served with the Screening Order
15 and judgment on December 17, 2010. Pursuant to the Federal Rules of Appellate Procedure, plaintiff
16 had thirty (30) days to file his notice of appeal. FRAP 4(a)(1); *see also* 4©. Instead, plaintiff filed his
17 notice of appeal more than five months after judgment was entered. Moreover, plaintiff did not seek
18 leave of this court to reopen the time to appeal and/or attempt to explain his extreme delay. Accordingly,
19 to the extent that plaintiff requested that the time to appeal in this case be reopened, such request is
20 denied.

21 **IT IS THEREFORE ORDERED** that to the extent that plaintiff requested that the time to
22 appeal in this case be reopened (*see* docket #23), such request is **DENIED**.

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27 ¹The Screening Order and judgment were entered on December 10, 2011 (docket #s 16 and 17).
28 Due to a mailing address labeling error by the Clerk of Court, the Screening Order and judgment were
re-mailed to plaintiff at his address of record on December 17, 2010, and thus he was served on that date.

1 **IT IS FURTHER ORDERED** that the Clerk shall **FILE** a copy of this Order in USCA Case
2 No. 11-16314.

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4 DATED this 20th day of July, 2011.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE